

STATE OF MICHIGAN
COURT OF APPEALS

COMERICA BANK,

Plaintiff-Appellant,

v

HARBOR NORTHWESTERN-38000, LLC,

Defendant-Appellee.

UNPUBLISHED
December 2, 2003

No. 241744
Oakland Circuit Court
LC No. 01-031527-CH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from a declaratory judgment entered in defendant's favor. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's predecessor in interest leased premises from defendant's predecessor in interest in 1973. The original lease term was for fifteen years commencing November 1, 1974. The lease contained an option clause granting plaintiff the right to renew the lease for four successive five-year terms upon six months' notice by certified mail. Plaintiff timely exercised its option to renew in 1989 and 1994. Plaintiff did not timely exercise its option to renew in 1999 because it was trying to renegotiate the rent. It faxed defendant notice of its intent to renew the lease for a five-year term in June 1999 and defendant agreed to the renewal. The parties dispute whether the fourth option survived the late exercise of the third option.

The parties submitted the case to the court for decision on stipulated facts. MCR 2.116(A). The trial court ruled that because plaintiff had failed to exercise the third option in the manner specified in the option clause, it lost its right to renew for a fourth and final term. The trial court's rulings on dispositive motions, declaratory judgments, and questions of law are all reviewed de novo on appeal. *Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997).

This Court stated in *Bowkus v Lange*, 196 Mich App 455, 459-460; 494 NW2d 461 (1992), rev'd on other grounds 441 Mich 930 (1993), that:

As a general rule, an option contract is strictly construed and the time for performance is of the essence. . . . Acceptance of the option must be in agreement with the terms proposed and the exact thing offered. Similarly, the option must be

exercised in strict compliance with the time limitations established by the option agreement. [Citations omitted.]

The rights granted under an option contract will be lost if not exercised within the time specified; substantial compliance is insufficient. *LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 315-316; 29 NW2d 704 (1947).

Here, it is undisputed that plaintiff did not exercise its option to renew the lease within the time period specified. Notice was due by April 30, 1999 and was not given until June 11, 1999. Therefore, defendant could have declined to renew the lease and plaintiff would have lost all possessory interest in the premises when the lease term ended on October 31, 1999. But defendant did not decline to renew the lease. Rather, it accepted plaintiff's late offer to renew the lease for a five-year term ending October 31, 2004. The parties' rights and obligations during the renewal term were the same as specified in the original lease except as otherwise provided. *Maas Bros, Inc v Weitzman*, 288 Mich 625, 630; 286 NW 104 (1939). The renewal agreement did not expressly delete or modify the option clause in the original lease and therefore plaintiff has one more option to renew.

We reject defendant's contention that the renewal agreement was inconsistent with and therefore superseded the lease. See *Nib Foods, Inc v Mally*, 70 Mich App 553, 560; 246 NW2d 317 (1976). Although the renewal agreement leased the same premises for a different rent than specified in the original lease, it expressly provided that the existing lease was renewed and the existing lease provided that rent would be recalculated for each successive renewal term. It does not appear that the renewal agreement was intended to abrogate the original lease. Thus, the renewal agreement does not supersede the original lease. *Joseph v Rottschafer*, 248 Mich 606, 610-611; 227 NW 784 (1929). While defendant contends that the renewal agreement is inconsistent with the original lease because it provides a different rent amount than the renewal rate specified in the original lease, there is no evidence in the record to support this contention.

The judgment for defendant is reversed and the case is remanded for entry of judgment in plaintiff's favor. Jurisdiction is not retained.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter